

Appl. No. 09/821,942
Amdt. Dated November 23, 2003
Reply to Office action of September 23, 2003
Docket No. 8246
Customer No. 27752

REMARKS

The Rejection under 35 USC §103

Bara et al., US Patent No. 5,637,291 in view of GB 2,260,985

Claims 1-18, and 20-22 are rejected under 35 USC §103(a) as being unpatentable over Bara et al., in view of GB 2,260,985. The Examiner states Bara discloses hair care and skin care compositions, for example eye line care, tinted gel compositions etc., comprising hollow particles of an expanded copolymer of vinylidene chloride and acrylonitrile, or vinylidene chloride, methacrylate and acrylonitrile, wherein the internal cavity is filled with a gas or a hydrocarbon such as isobutene all of which are also described in the instant application. The Examiner also states that Bara discloses the particle size, and density as claimed by the present claims 3-4 and that it is implicit from the teachings of Bara that the polymer particles possess a thermoplastic wall and thus meet the limits of claims 5-9. Further, it is the Examiner's position that although Bara does not disclose leave-in products or teach the specific hydrophobically modified polymer as currently claimed, Bara does teach gelling agents such as Carbopol in general which could be hydrophobically modified.

GB 2,260,985 is cited as teaching hair conditioner compositions comprising hydrophobically modified acrylic polymers for conditioning hair. It is the Examiner's position that it would have been obvious for one of ordinary skill in the art at the time of the instant invention to substitute the conventional polymers of Bara with the hydrophobically modified copolymers now claimed because GB '985 provides great flexibility in preparing conditioning products. Applicant respectfully traverses the Examiner's rejection based on the comments below.

Applicant's claimed invention requires a hydrophobically modified water-swellable or water soluble polymer. None of the polymers disclosed in Bara fall within Applicant's described hydrophobically modified polymers. It was incorrectly stated in response to the previous office action that the subject composition was a leave-in conditioning product. Applicant's claimed invention is intended as a leave-in volumizing product that provides more volume and lift to the hair. The inclusion of microspheres in Bara is to ensure the dispersion of an oily phase within an aqueous phase and not to increase hair to hair interactions as in the present invention. In contrast Bara states as an intended use, "hair smoothing" which would result from composition having a higher percentage of oil and is opposite the intention of Applicant's claimed invention. While Bara discloses that the oily phase can be present in an amount from 0.1-30%, all of the exemplified compositions contain at least 5% of an oily phase. One of skill in the art reading Bara would not expect these compositions to form films as required by the instant invention because of the high levels of oil.

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GB '985 discloses hydrophobically modified polymers, specifically for the purpose of hair conditioning. It is known in the art that hair conditioning actives decrease the volume of the hair. What the inventors of the present application have discovered is that by combining the particles with the hydrophobically modified polymers as described in the application hair to hair interactions are actually increased thereby increasing friction and thus volume. There would be no motivation for one of ordinary skill in the art to use the conditioning polymers disclosed in the '985 reference in combination with the Bara reference and expect an *increase* in volume. One would expect as taught in '985 that the addition of the polymers in '985 to Bara would result in increased conditioning benefits and therefore a *decrease* in volume of the hair due to the decrease in friction. The present application is not directed to conditioning in any way. The present application is directed to a leave-in volumizing product.

Additionally, neither of the cited references discloses, teaches or even suggests that the hydrophobically modified polymers could be used in conjunction with the particles to form films which actually increase the volume of the hair. Therefore, one of ordinary skill in the art would have no motivation or expectation of success in combining the cited references. Accordingly, claims 1-16, and 18, are novel and unobvious over the prior art of record.

Claims 20-22 are rejected over Bara since the Examiner states that adding any composition to the hair obviously would increase the volume. Applicant asserts that the "volume" referred to in the present application is not simply a measurement but refers to the generally recognized in term of art in the hair care area. One of ordinary skill in the art would recognize that the term "volume" refers to both increase in friction on the hair shafts and the perception by the consumer that their hair is more full and has more body. The present invention does not achieve increased volume simply by coating the hair to make it larger. Accordingly, claims 20-22 are nonobvious in view of the prior art of record.

Conclusion

In light of the remarks presented herein, Applicants' respectfully submit that the Claims 1-18, and 20-22 are allowable over the prior art of record or any combination thereof. Reconsideration is respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicants' undersigned attorney to discuss any remaining issues.

Respectfully submitted,

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